



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-115398

July 14, 1978

The Honorable Edmund S. Muskie
Chairman, Committee on the Budget
United States Senate

The Honorable Robert N. Giaimo
Chairman, Committee on the Budget
House of Representatives

This is a final response to your letter of November 21, 1977, requesting that we undertake a study on the period of availability of funds provided for entitlement programs in appropriation acts. We provided you with partial information on two previous occasions.

In our letter of January 13, 1978, we provided a listing of entitlement programs and a comparison of appropriation language used in the appropriation acts and that in the President's budget proposal for fiscal year 1978 for selected programs administered by the Department of Health, Education, and Welfare; the Department of Agriculture; and the Veterans Administration. This letter also provided the amount of budget authority that would have been requested by the executive branch for each of the programs funded on other than a 1-year appropriation had they been funded on a regular 1-year appropriation.

On February 21, 1978, we provided you information concerning the legislative history for the reasons why selected entitlement programs were financed by other than 1-year appropriations. That letter summarized the explanations and views that we had received from the Department of Health, Education, and Welfare and the Veterans Administration. At that time we advised you that we had not received a response from the Department of Agriculture, and that as soon as the response was received, we would provide the information to you.

This letter provides that information and summarizes the explanations and views of the Department of Agriculture as to why three accounts--(1) Food Stamp Program (12-3503-0-1-604), (2) Child Nutrition Programs (12-3539-0-1-604) and (3) the Special Supplemental Food Program (WIC) (12-3510-0-1-604)--are funded by no-year appropriations. We are also sending a copy

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of the Department's response.

The Department provided no statements from the legislative history as to why no-year appropriations were established in the authorizing legislation. Although the Department cited a report of the House Committee on Agriculture on the Food Stamp Act of 1977, the citation makes no reference to no-year funding. The information does, however, specifically identify the Food Stamp Program as an entitlement program for which the appropriations process is perfunctory.

The Department's position is that no-year appropriations for programs funded by the above three accounts are necessary to maintain program flexibility. In each case the Department states that changing from a no-year account to a 1-year account will not provide the Congress with any additional control over spending.

Funding for child nutrition programs is on a performance basis and is essentially an open-ended program. The Department, in justifying no-year appropriations, points out that funding needs are affected by outside factors and it is therefore impossible to predict in advance the precise funding needs for these programs, and late claims make it impossible to determine the precise amount of funding until after the fiscal year is over. The Department points out that without the availability of carry-over funds it would be compelled to budget on the maximum possible spending levels, but with no-year authority it would have flexibility to use funds from periods when estimates have been too high to offset those periods where estimates have been too low.

The Department response adds that if funds were allowed to lapse (if they were timed funds) it would open itself to lawsuits for insufficient outreach efforts for eligible persons not participating in the programs.

The Department states that a no-year account for the food stamp program is necessary for essentially the same reasons as for child nutrition programs--it is difficult to project costs because program levels are dependent upon participants and economic conditions beyond its control. In their opinion, without carry-over authority the Department would have to fund the program at a higher level to cover all potential funding requirements, and at the possible expense of other Department programs. No-year funding is needed for program flexibility to meet changing conditions in the economy. The Department again feels it may open itself to lawsuits if it lets any timed appropriated funds lapse.

The Department believes that no-year funding is the best mechanism to handle the special supplemental food program (WIC) to provide for orderly and carefully managed growth of this grant program. The Department is operating the program under a court order and if it has timed funds that were to lapse it could be charged in court with impounding funds and conducting insufficient outreach. In their opinion, no-year funding permits flexibility in planning orderly and controlled program growth without having to "dump" funds to be sure that they are obligated by the end of the fiscal year.

As agreed we have made no independent analysis of the Department's reasons for retaining these as no-year appropriation accounts, nor have we determined whether they should be 1-year or multi-year accounts. In a related study, however, we have made a preliminary determination that there are no compelling programmatic or budgetary reasons for retaining the three accounts as no-year appropriations, although we recognize there may be legal and administrative concerns.

As arranged with your offices, we are sending copies of this report to the Secretary of Agriculture and to the Director, Office of Management and Budget. Copies will also be made available to other interested parties who request them.



Comptroller General
of the United States

Enclosure



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

MAY 17 1978

Mr. Robert Sexton
Program Analysis Division
Room 5005
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Sexton:

This responds to your January 19, 1978 letter requesting information from the Food and Nutrition Service on availability of funds appropriated for certain entitlement programs.

Statements as to why funds for certain entitlement programs are provided on a basis other than a regular 1-year appropriation along with an analysis of whether those reasons are still valid, and whether other funding mechanisms could adequately meet program needs, are enclosed.

We hope that these reports will be of benefit to the House and Senate Budget Committees.

If we can be of further assistance please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Carol Tucker Foreman".

Carol Tucker Foreman
Assistant Secretary for Food
and Consumer Services
Enclosures

Department of Agriculture

PROGRAM Child Nutrition Programs

ACCOUNT Child Nutrition Programs (12-3539-0-604) (no year)

Why are program funds provided on the basis of other than a "one year" appropriation? (Include citation from legislative history for reasons.)

Section 3 of the National School Lunch Act provides that any funds appropriated to carry out the provisions of the National School Lunch Act or the Child Nutrition Act of 1966 "shall remain available for the purposes of the Act for which appropriated until expended." This provision became part of the National School Lunch Act with the enactment of Public Law 91-248 in May 1970.

There are a number of reasons for the "no year" account structure for child nutrition programs. Payment to the States for all activities under the appropriation, except for equipment assistance and nutritional studies and surveys (which amount to less than 1 percent of the account), are made on a performance basis. Funding is thus guaranteed for each meal served meeting the particular requirements of the program. The funding is essentially open-ended.

This account structure is essential to proper administration of these programs.

A. It is impossible to predict the precise funding needs for these programs. Funding needs are affected by factors outside of USDA control such as changes in enrollment, changes in unemployment that affect eligibility for free and reduced-price meals, changes in food price inflation that can affect charges to paying students, changes in State appropriations for child nutrition programs, changes in school operations due to local school funding problems, passage of State laws mandating school breakfast expansion or rescinding earlier laws containing such a mandate, the size of the summer feeding program for any year, the number of new centers entering the child care food program, and the number of snow days during which schools are closed and meals are not served (snow days decreased program expenditures during FY 1977).

B. In addition, while it is difficult accurately to predict mandated funding needs in advance, it is also impossible to know the precise amount of funding needs until long after the fiscal year is over. Meal counts for the final months of the fiscal year, including meal counts for the summer feeding program, may come in long after the fiscal year closes. Moreover, since there are over 100,000 institutions involved in child nutrition programs, the occurrence of late claims and revised claims is a certainty.

A number of months into fiscal 1978, for example, FNS learned from final FY 1977 meal counts that insufficient cash-in-lieu-of-commodities had been provided to States in FY 1977 to meet the requirements of section 6(e) of the National School Lunch Act. Carry-over funds available from FY 1977 were used to meet this FY 1977 obligation. In addition, new claims of about \$220,000 have recently been established for program activity in FY 1976.

The availability of carry-over balances at the beginning of the year makes it possible to fund any variance that may have developed between the program activity totals estimated in the appropriation act and the actual program performance as shown in most recent program reports. The availability of carry-over balances has proved extremely useful in responding to the changes in program growth which are beyond the Department's control.

C. Without carry-over funds, it would be extremely difficult for the Department to plan and operate these programs.

An excellent example of the need for flexibility is found in the Summer Food Service Program for Children. This all federally funded program supports feeding operations sponsored by a large variety of local organizations for a short period of time. Attendance at playgrounds and other summer feeding sites can fluctuate greatly, and virtually all attendees are eligible. There is much less of a year-round organizational structure in the summer program than there is in the lunch program. Consequently, the variation between planned meals and actual meals can be very large and can appear with very little warning. The legislation requires that every meal served must be reimbursed at the stipulated rates. Since the program comes at the end of the fiscal year, there is no time to send up a supplemental request should additional amounts be necessary. The availability of carry-over balances is then crucial to fulfilling the mandated reimbursement for children's meals.

If there were a one-year appropriation, it would have to be large enough to cover potential maximum program costs instead of most likely actual program costs. The difference between the two is substantial.

Last year, State plans submitted mid-way through the fiscal year showed a need of over \$200 million for the summer program. In fact, only about \$125 million was spent. Without the availability of carry-over funds the Department would be compelled to budget on the basis of the maximum possible spending level or to seek supplementals that were unlikely to be necessary, in order to cover contingencies under which these funds might be needed.

The availability of carry-over funds thus helps avert situations in which large sums would be requested and then returned unused in most years. Under the current funding structure, when estimates are too high, funds carry-over, and meet the needs for those periods when estimates have been too low.

Carry-over funds are also useful in the event of a continuing resolution. Since mandated reimbursement levels must increase, the additional funding requirements can be met with carry-over funds.

It should be noted that it is the considered policy of the Office of Management and Budget that when situations such as this warrant multi-year availability of funds, the no-year account is the proper account structure to use.

Are the above reasons for other than "one year" funding still valid?

Yes, the above reasons continue to be valid. In fact, there is even more reason for the "no year" account structure than there was when Public Law 91-248 was enacted in 1970. Since then, child nutrition programs have changed from formula grants to performance-funded programs.

Can other funding mechanisms (e.g., "one-year" appropriation) meet program needs? Why or Why not?

Other funding mechanisms such as a one-year appropriation cannot meet program needs. Carry-over balances provide the funding flexibility to meet the demands of program growth that, due to uncontrollable changes in costs, could not have been foreseen at the time original budget estimates were made and appropriations were enacted. One-year accounts require a sufficient degree of certainty to estimate costs with a fair degree of precision, and the capability of controlling such costs. This is not present in these programs.

Other problems would also result from annual accounts. As described above, a one-year account structure leads to budget estimates being set at the maximum potential spending level, not at the most likely actual spending level. This can result in reduced funding for other USDA programs that are not performance-based, because the food programs would take up a larger portion of the budget ceiling. Then at the fiscal year's end, the unused food money would lapse.

This issue is of substantial significance. While an amount of \$100 million may be small in child nutrition programs, it looms enormous in many other areas of the Department. Even modest upward adjustments in child nutrition budget requests to cover contingencies and compensate for the loss of carry-over authority would have drastic consequences for small but important agricultural, rural development, or natural resource programs.

In addition, one-year accounts would open up the Department to lawsuits. Suits would be filed to prevent the Department from allowing funds appropriated for these programs to lapse. Throughout the history of these programs there has been criticism of insufficient outreach or of other administrative practices that have been alleged to contribute to the fact that some eligible persons or institutions are not participating in a program. The prospect of appropriated funds lapsing is likely to

spur such suits. This is what occurred in 1973, when some food stamp funds were about to lapse. Plaintiffs in Bennett v. Butz charged that the funds were lapsing due to insufficient outreach and secured a court order imposing controversial outreach regulations and instructions on the Department and the States, and requiring the unspent funds to remain available.

In this area, the Department would be caught in an untenable position -- forced to estimate high to assure enough funds were available and then subject to lawsuits for insufficient outreach when funds lapsed because the estimate was indeed high.

Indeed, the Department is now making a concerted effort to produce more accurate estimates in the FNS food programs. The President's FY 1979 budget is at or slightly below the CBO estimates for child nutrition programs. Changes in the account structure would end the current effort to budget based on the best "point estimate," and would instead lead to estimates near the high end of the range of possible funding needs for rather unpredictable and uncontrollable programs.

The problems in a one-year account are illustrated by recent experiences with the Special Milk Program, an entitlement program that does operate under a one-year account. Twice in recent years the Department ascertained very late in the fiscal year that the Special Milk appropriation would be inadequate. This was learned too late to request a supplemental. The matter was resolved only through using the Secretary's emergency transfer authority and transferring carry-over funds from other FNS accounts that were not one-year accounts. This transfer was possible because the Special Milk Program is a small account -- about \$150 million. The shortfall was only a few million dollars. The Department would be highly unlikely to be able to find the type of funds elsewhere in the Department that would be needed to fund an emergency transfer of the scope necessary for a 3-billion dollar child nutrition account or a 6-billion dollar food stamp account.

Consequently, the Department would likely be forced to submit many requests for supplementals. Such requests would often have to be based on rather shaky data, since program data often lags by a number of months in these programs, and the Department would be unable to risk having insufficient funds available to keep programs operating through September 30.

A one-year appropriation could also lead to poor planning and, therefore, increased abuse, in programs such as the summer feeding program. If States had to await a supplemental appropriation late in the spring to receive additional funds, and States delayed approving some eligible sponsors until these funds were in hand (as many States would), these sponsors would begin operations without much lead time. The history of this program has shown that inadequate planning leads to increased program mismanagement and abuse.

It should be noted that a two-year account in which funds appropriated for either of the two years lapse at the end of the second year poses exactly the same problems as the one-year account. The only difference is that the problem would occur every other year, instead of annually. For the same reasons that a one-year account is not suited to these programs, so also a two-year account of this nature is not suitable.

Finally, we should emphasize that we see no advantages from a change in the account. Moving to a one-year account in no way increases Congressional control over spending. Nor does it encourage better management. The effects on proper management would be negative.

Department of Agriculture

PROGRAM Food Stamp Program

ACCOUNT Food Stamp Program (12-3503-0-1-604) (no year)

Why are program funds provided on the basis of other than a "one year" appropriation? (Include citation from legislative history for reasons.)

Public Law 95-86, approved August 10, 1973, provided that "sums appropriated under the provisions of this Act shall, notwithstanding the provision of any other law, continue to remain available until expended." The new Food Stamp Act of 1977, Public Law 95-115, continues this provision.

The Food Stamp Program is an entitlement program, as is clearly indicated by the report of the House Committee on Agriculture on the Food Stamp Act of 1977 (See attachment on House report language). A no-year account is necessary in the food stamp program for essentially the same reasons as it is needed for child nutrition programs. Since the Food Stamp Program is an entitlement program, its budget depends largely on the number of participants and the levels of the coupon allotments. The factors which affect participation and allotment levels are outside USDA control. It is very difficult to project these numbers because they are dependent on general economic conditions. Having the capacity to use prior year appropriations can help the program adjust to changing economic conditions which would increase or decrease participation and costs.

The experiences of recent years have shown just how difficult it can be to predict food stamp costs. When food prices rose in 1973 and when unemployment soared in late 1974 and 1975, food stamp costs surpassed all predictions. On the other hand, original estimates for food stamp costs in fiscal 1977 were over a billion dollars too high, as food price increases moderated and unemployment levels dropped. Just recently, average food stamp bonuses rose 5.5% in February 1978. This was unexpected.

Given this difficulty in predicting uncontrollable program costs accurately, carry-over authority is necessary. Without carry-over authority, it will be necessary to fund the program at a higher level each year than otherwise would be the case. Food stamp estimates always cover a broad range--usually a range of several hundred million dollars. Rather than funding the program at the best "point estimate" in this range, loss of carry-over authority will lead to budget estimates near the upper end of the range. This will produce high budget requests (as well as repeated requests for supplemental appropriations), following which, in most instances, funds will lapse. The lapse of funds, in turn, will likely lead to a new spate of lawsuits against the Department and the States for failure to do sufficient outreach to enroll persons who are eligible for stamps but are not participating in the programs.

That is precisely what happened the last time that there was an annual account for food stamp appropriations, five years ago. It was very shortly after the issuance of the court order in Bennett v. Butz, which imposed major new outreach requirements on USDA and States (and which also barred any funds from lapsing), that Congress adopted the provision of P.L. 93-86 providing that food stamp appropriations should remain available until expended.

Budgeting at or near the maximum potential funding needs for food stamps could also have drastic implications for non-FNS programs in USDA. The Department could be forced to cut other agricultural programs to cover potential food stamp funding requirements, only to have food stamp funds then lapse.

Are the above reasons for other than one-year funding still valid?

Yes, the reasons for no-year funding are still valid.

Can other funding mechanisms (e.g., "one-year" appropriation) meet program needs? Why or Why not?

No-year funding is necessary to meet the program needs of the Food Stamp Program. It has provided the financial capability to adjust to changing conditions in the economy.

For instance, during the Transition Quarter (July 1, 1976-September 30, 1976), food stamp funds appeared to be insufficient. Action to invoke Section 16(b) of the Food Stamp Act to reduce the allotments to the participants was seriously considered. To avoid this action, the Food and Nutrition Service analyzed the prior year accounts and was able to recover the additional funds to carry the program through September 30 without invoking Section 16(b). The cushion provided by the no-year account thus avoided a needless hardship to food stamp participants. As it turned out, participation did not increase as expected in August and September so that there was a \$112 million surplus to carry over at the year end. Had it not been for the authority to use carry-over funds, however, millions of low income Americans would have had their benefits reduced, only to discover at the end of the fiscal year that the reduction had been unnecessary.

The potential for this sort of crisis always exists given the possibilities for downturns in the economy, increasing food costs, energy shortages, major strikes, or natural disasters. These uncontrollable factors make it very difficult to estimate food stamp costs in advance, and if they occur in the last months of the fiscal year, Congress may be in recess and it may be too late to secure a supplemental appropriation. In the interests of avoiding needless hardship to food stamp participants, and to give the program the greatest flexibility to respond to unforeseeable situations, it is necessary to have a no-year account.

The other factors cited in the discussion of the child nutrition account are also relevant here. An account structure other than a no-year account could have serious adverse consequences on program planning, on recipients, and on the remainder of the USDA budget. It would lead to higher budget requests for food stamps and to frequent requests for supplementals based on questionable data, in order to cover possible (even if unlikely) increased, uncontrollable funding needs. At the same time, it would not provide the Appropriations Committees with more control over food stamp expenditures.

FROM REPORT OF THE HOUSE COMMITTEE ON AGRICULTURE ON THE FOOD STAMP
ACT OF 1977

"Eligibility requirements for the receipt of food coupon allotments are established on a uniform national basis by the Secretary pursuant to section 5(b) of the Act, while assistance must be furnished to all eligible households that apply. Any household that meets those eligibility standards in any state is entitled to food stamp benefits. The law says eligible households 'shall be provided' with benefits, and courts have construed this language in the 1964 Act as creating a statutory right or entitlement. Carter v. Butz, 479 F.2d 1084, 1087 n. 10 (3rd Cir.), cert. den. U.S. (1973); Stewart v. Butz, 356 F. Supp. 1345, 1349 n. 1 (W.D. Ky. 1973), aff's. 491 F. 2d 165 (6th Cir. 1974); Bermudez v. United States Department of Agriculture, 348 F. Supp. 1279, 1281 n. 4 (D. D.C. 1973) aff'd. 490 F. 2d 718 (D.C. Cir.), cert. den. U.S. (1973). Cf. United States Department of Agriculture v. Moreno, 413 U.S. 528 (1973); United States Department of Agriculture v. Murry, 413 U.S. 508 (1973). This concept of a guarantee has been further entrenched by a decision of the United States Court of Appeals for the District of Columbia Circuit in Rodway v. United States Department of Agriculture, 514, F. 2d 809, 818, 820 (1973), in which the court confirmed that the 1964 food stamp statute mandated that the opportunity to obtain a nutritionally adequate diet must be offered to all eligible recipients (it is only 'more nutritious' in the Committee bill).

"Thus, section 4(a) of the Committee bill, in conjunction with several other sections, creates an entitlement program, providing 'spending authority' as defined in section 401(c)(2)(C) of the Budget Act, 15 U.S.C. 1351(c)(2)(C). The obligation to make payments in the form of stamps is unconnected with the appropriations process. Even though the program has to pass through appropriations, the control is perfunctory. The appropriation level has to feed the program usage level dependent upon the number of recipients as affected by economic conditions.

"When questioned in 1976 by Subcommittee Chairman Whitten, Dem.-Miss., about whether with respect to the funding of the food stamp program, 'you have any leeway that leaves it to your discretion, or is it required by law?', Edward Hekman, the then Program Administrator immediately replied that 'it is required by law.' Chairman Whitten was satisfied:

"I wanted the record to show the fact that it is required by law. It is an obligation of government...you acknowledge we owe the money and are obligated to pay it."

"The food stamp program is, thus, clearly an entitlement program. The appropriations process merely perfunctorily reflects the preceding obligation to pay."

Department of Agriculture

PROGRAM Special Supplemental Food (WIC)
 ACCOUNT Special Supplemental Food Program (WIC)
 (12-3510-0-1-604)
 (no year)

Why are program funds provided on the basis of other than a "one-year" appropriation? (include citation from legislative history for reasons.)

The Special Supplemental Food Program (WIC) is authorized by Section 17 of the Child Nutrition Act. This section was added to the Act with the enactment of Public Law 94-105 in October 1975. Carryover authority for all the programs authorized by the Child Nutrition Act is contained in Section 3 of the National School Lunch Act.

Are the above reasons for other than "one-year" funding still valid?

Section 3 of the National School Lunch Act continues to apply to the Special Supplemental Food Program (WIC).

Can other funding mechanisms (e.g., "one-year" appropriation) meet program needs? Why or Why not?

No-year funding is the best mechanism to handle an appropriation account like the Special Supplemental Food Program (WIC). The WIC program is a grant program whose full potential for growth has not yet been realized. The program currently reaches 1.2 million persons, while as many as 3 million persons may be eligible. Over half of the counties in the U. S. do not presently have a WIC program.

In such a situation, a no-year account is the proper mechanism to provide for orderly and carefully managed growth. Members of Congress such as Senator Bellmon have expressed to us their concern that WIC program growth be carefully handled and not be so rapid as to jeopardize program integrity. However, a one-year account structure would be likely to foster just the sort of uncontrolled growth spurt that neither the Department nor Congress desires.

The pressure not to allow any appropriated funds to lapse--from members of Congress, States, and other interested parties--would be tremendous. Standing behind this pressure would be the virtual certainty of lawsuits if any funds were going to lapse. Two such WIC lawsuits have been brought before and

both were successful. The Department is still operating the program under court order, as has been the case for most of the program's history. If WIC funds were to be permitted to lapse while women, infants, and children at nutritional risk went unserved, the Department would almost certainly be charged in court both with impounding funds and conducting insufficient outreach.

Thus, if the Department allocated all its funds (and restricted states to operating within these allocation levels), but found well into the fiscal year that growth in some areas was not as fast as planned and some funds were left unused, the Department would have little alternative but to dump the funds out for use in almost any legal fashion that could result in all funds being expended by September 30. Otherwise, the Department would have held states back from further expansion when women and infants at risk were on waiting lists, only to return funds back to the Treasury at the end of the year. The Department simply would be unable to stand the political heat from such an occurrence. As a consequence, the Department would probably have to compromise its current policy of carefully targeting funds on neediest areas first and on the persons most at risk within these areas. Instead, the program might be established near the end of the year in whatever new areas could soak up the money fastest.

This could lead both to program irregularities, and to a very high annualized funding rate in the last months of the fiscal year. These high annualized rates in turn pose the alternative of either cutting back the program the following year, which is politically difficult, or further increasing funds for the following year through a supplemental. In the latter case, more total funds are thus spent. In addition, needier areas that could not soak up the funds as fast at the end of the fiscal year are left outside the program because the less needy areas remain in the program and continue to use up the available funds. Thus a basic inequity is built into the ongoing structure of the program.

By contrast, no-year funding provides for orderly and controlled program growth within the appropriation constraints, allowing for the opening of new projects with the assurances that funding will not be abruptly cut in the succeeding fiscal year, and that supplementals should not be necessary in the succeeding year.

Finally, it should be noted that a change in the account structure will not provide any measurable change in control by the Appropriations Committees. The focus of control is the nature of the authorization for the program (i.e., entitlement or otherwise), not the duration of the account: